

FILED BY CLERK

JAN 20 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2011-0321-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
JON ROLLAN MARTIN,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR200701396

Honorable Robert C. Brown, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Jon R. Martin

Florence  
In Propria Persona

ESPINOSA, Judge.

¶1 Jon Martin petitions this court for review of the trial court's summary denial of his petition for post-conviction relief brought pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 Martin was convicted after a jury trial of three counts of aggravated assault against peace officers, and the trial court sentenced him to an aggravated fifteen-year

prison term on each count, to be served consecutively. We affirmed his convictions and sentences on appeal. *State v. Martin*, No. 2 CA-CR 2008-0016 (memorandum decision filed Apr. 2, 2009). Martin then filed a notice and petition for post-conviction relief, arguing that: (1) the jury instructions did not comport with the indictment; (2) during opening statements, a sheriff's deputy manipulated a pump-action shotgun to illustrate the sound allegedly heard by law enforcement officers approaching Martin's home, constituting an improperly "graphic demonstration"; (3) trial counsel had been ineffective in failing to impeach the testimony of the victims with a report purportedly inconsistent with their testimony; and (4) counsel also was ineffective because he did not demonstrate sufficiently that no pump-action shotgun had been found in Martin's home. Martin also alleged trial counsel had admitted "personal and professional issues" resulting in ineffective assistance.

¶3 The trial court summarily denied relief. It concluded Martin's first two arguments were precluded because they could have been raised on appeal, *see* Ariz. R. Crim. P. 32.2(a)(3), and, moreover, Martin's claim related to the jury instructions was "without merit." It further observed that Martin had not demonstrated his trial counsel's conduct fell below prevailing professional norms or that it did not constitute valid tactical decisions. *See Strickland v. Washington*, 466 U.S. 668, 687-88 (1984) (defendant must show counsel's conduct fell below prevailing professional norms and prejudiced defense); *State v. Gerlaugh*, 144 Ariz. 449, 455, 698 P.2d 694, 700 (1985) ("Disagreements in trial strategy will not support a claim of ineffective assistance so long as the challenged conduct has some reasoned basis."). The court noted the report also was inconsistent with Martin's testimony, that counsel had otherwise identified inconsistencies in the victims' testimony, and he had elicited testimony that no pump-

action shotgun had been found in Martin's home. After the court denied Martin's subsequent motion for rehearing, this pro se petition for review followed.<sup>1</sup>

¶4 On review, Martin largely reurges the same arguments made below. But he does not squarely address the trial court's conclusion that his first two arguments are precluded pursuant to Rule 32.2(a)(3) because they could have been raised on appeal.<sup>2</sup> As to his claim based on a purported inconsistency between the indictment and jury instructions, Martin asserts only that the claim "is per se a revers[i]ble error." To the extent Martin suggests the claim therefore is not subject to preclusion, he is mistaken. *See Swoopes*, 216 Ariz. 390, ¶¶ 28, 42, 166 P.3d at 954, 958 ("mere assertion by a defendant that his or her right to a fair trial has been violated is not a claim of sufficient constitutional magnitude" to avoid finding of waiver "for purposes of Rule 32.2"; fundamental error subject to preclusion). Accordingly, he has not met his burden of demonstrating the court abused its discretion in rejecting those claims.

¶5 Nor does Martin adequately address the trial court's finding he had not demonstrated that counsel's conduct had fallen below prevailing professional norms and that counsel instead had made reasoned, tactical decisions. *See Gerlaugh*, 144 Ariz. at 455, 698 P.2d at 700. Although Martin claims the report counsel purportedly used for

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<sup>1</sup>Although Martin's petition for post-conviction relief was filed by appointed counsel, for reasons not apparent from the record, Martin filed his reply to the state's response and his motion for rehearing in propria persona. The trial court observed that counsel was acting in an advisory capacity.

<sup>2</sup>In his reply filed below, Martin asserted for the first time, as we understand his argument, that his appellate counsel had been ineffective for failing to raise these claims. But an issue raised for the first time in a Rule 32 reply is waived. *See State v. Lopez*, 223 Ariz. 238, ¶¶ 6-7, 221 P.3d 1052, 1054 (App. 2009). In any event, Martin does not raise this claim on review. *See Ariz. R. Crim. P. 32.9(c)(1)* (petition for review shall contain "the reasons why the petition should be granted").

impeachment was not inconsistent with his testimony, he does not explain this assertion or provide any citation to the record supporting it. *See* Ariz. R. Crim. P. 32.9(c)(1) (“[P]etition for review shall contain specific references to the record.”). Accordingly, he has waived this argument on review and we do not address it further. *See State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (insufficient argument waives claim on review).

¶6 We conclude the trial court clearly and correctly denied relief, and it is not necessary to repeat the entirety of the court’s analysis here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has identified and ruled correctly on issues raised “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court’s correct ruling in a written decision”). Thus, for the reasons stated, although we grant review, relief is denied.

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge